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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,356	12/17/2004	Tokutomi Watanabe	47233-0048	8100

55694 7590 11/30/2009

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EXAMINER	
STULII, VERA	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
11/30/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/518,356	**Applicant(s)** WATANABE ET AL.	
	Examiner VERA STULII	**Art Unit** 1794	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *13,15,16,18-22,26-30 and 32-35*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Vera Stulii/
Patent Examiner
Art Unit 1794

/Lien T Tran/
Primary Examiner, Art Unit 1794

Continuation of 11:

Applicants' comment filed 11/12/2009 have been considered, but are not persuasive. In the amendment after final the limitation of "hop extract" in claim 17 that recited "The drink according to claim 13, which further comprises a hop extract" was added to the text claim 13, and the limitation of of "hop extarct" in claim 31 that recited "The method according to claim 26, wherein the drink further comprises a hop extract" was added to claim 26. Claims 13 and 26 now contain limitation of claim 17 and 31 repectively. These limitations were previously addressed and rejected under 35 U.S.C. 103(a) as being unpatentable over Liu (CN 1237624) in view of Tarkmishvili et al as applied to claims 16 and 26, and further in view of Gong Yungao (CN 1285153) for the same reasons as stated in the Non-Final Office action mailed 01/27/2009 (pp. 7-8) and Final Office action mailed 08/13/2009 (page 3).

Further in reponse to Aplicants' arguments filed 11/12/09, it is noted that on pages 6-7 of the Reply to the Final Office action mailed 8/13/2009, Applicants summarize rejection of claims 17 and 31. In response to Applicants' arguments regarding foam-holding property and addition of hop extract, it is noted that claim 13 recites “[a] foam producing drink comprising carbon dioxide, a foaming agent and a tea leaf extract wherein the tea leaf extract containing a soluble solid content is obtained by water, water/ethanol or ethanol extraction, and is a foam-holding component, wherein the soluble solid content of the tea leaf extract is included in the drink in an amount of 0.01% to 3% by weight relative to the total volume of the drink, wherein said drink has a foam-holding property …, and wherein drink comprises a hop extract”. As stated in the Final Office action mailed 08/13/2009, Liu discloses a foam producing (forming) drink comprising carbon dioxide, a foaming agent and a tea leaf extract wherein the tea leaf extract containing a soluble solid content is obtained by water, water/ethanol or ethanol extraction, wherein the soluble solid content of the tea leaf extract is included in the drink in an amount of 0.01% to 3% by weight relative to the total volume of the drink, wherein said drink. Tarkmishvili is relied upon as a teaching of a tea extract as a foam holding agent. Tarkmishvili et al disclose a novel foaming agent from tea extract which could replace egg white in the production of zefir (foamy confectionery product) and replace it entirely in the production of soufflé. Tarkmishvili et al disclose that the extract is made from "current types of tea leaves”. Egg whites were well known in the art to be used in the foamy confectioneries for foam formation and foam holding properties. Therefore, as disclosed by Tarkmishvili, tea extract possesses similar foam formation and foam holding properties to whipped egg whites. Gong Yungao is relied upon as a teaching of a tea beverage “with medical health care” action containing hops and tea leaf extract. Since Liu discloses tea beverage with beneficial properties for human health, and since Gong Yungao discloses tea beverage in combination with hops that prevents hypertension, regulates metabolism, and has a good taste, one of ordinary skill in the art would have been motivated to modify Liu in view of Tarkmishvili et al and to include hop extract as an ingredient for the benefits taught by Gong Yungao. One of ordinary skill in the art would have been motivated to do so, since both tea and hops are known to impart bitter flavor to beverages. One of ordinary skill in the art would also have been motivated to do so, since hops were well known in the art to be used in preparation of effervescent beverages. In regard to various foam-holding properties as recited in claims 13, 15-16 and 30, it is noted that although the combination of references do not specifically disclose every possible quantification or characteristic of its product, such as specific characteristics of the foam-holding properties, this characteristics would have been expected to be in the claimed range absent any clear and convincing evidence and/or arguments to the contrary. The reference discloses the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of ordinary skill in the art would recognize that the specific

characteristics of the foam-holding properties, among many other characteristics of the product obtained by referenced method, would have been an inherent result of the process disclosed therein. The Patent Office does not possess the facilities to make and test the referenced method and product obtain by such method, and as reasonable reading of the teachings of the reference has been applied to establish the case of obviousness, the burden thus shifts to applicant to demonstrate otherwise.